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14
15 **UNITED STATES DISTRICT COURT**
16 **SOUTHERN DISTRICT OF CALIFORNIA**

17
18 **Patricia Connor**, Individually and
19 on Behalf of All Others Similarly
20 Situated,

21 v. Plaintiffs,

22
23 **JPMorgan Chase Bank and**
Federal National Mortgage
Association a/k/a Fannie Mae,

24
25 Defendants.

26
27 Case Number: 10 CV 1284 DMS BGS

CLASS ACTION

28
First Amended Complaint for
Damages and Injunctive Relief
Pursuant To The Telephone
Consumer Protection Act, 47
U.S.C § 227 et seq.

Jury Trial Demanded

INTRODUCTION

1. Patricia Connor (“Plaintiff”) brings this class action for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of JPMorgan Chase Bank and its related entities, subsidiaries and agents (“Chase”) and Federal National Mortgage Association a/k/a Fannie Mae (“Fannie Mae”) or collectively as “Defendants”, in negligently and/or willfully contacting Plaintiff on Plaintiff’s cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”), thereby invading Plaintiff’s privacy. Plaintiff alleges as follows upon personal knowledge as to herself and her own acts and experiences, and, as to all other matters, upon information and belief, including the investigation conducted by her attorneys.

JURISDICTION AND VENUE

2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff seeks relief on behalf of a national class, which will result in at least one class member belonging to a different state than that of Defendants. Plaintiff also seeks up to \$1,500 in damages for each call in violation of the TCPA, which, when aggregated among a proposed class number in the tens of thousands, exceeds the \$5,000,000 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction and the damages threshold under the Class Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.
3. Venue is proper in the United States District Court for the Southern District of California pursuant to 18 U.S.C. § 1391(b) and 1441(a) because Defendants do business within the State of California and the County of San Diego.

PARTIES

4. Plaintiff is, and at all times mentioned herein was, an individual citizen and resident of the State of California. Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153 (10).
5. Plaintiff is informed and believed, and thereon alleges, that Defendant JP Morgan Chase & Co. is, and at all times mentioned herein was, a corporation whose primary corporate address is 270 Park Avenue, New York, NY 10017. JP Morgan Chase & Co. is a financial holding company and was incorporated under Delaware law in 1968. JP Morgan Chase’s principal bank subsidiaries are JP Morgan Chase Bank, N.A. and Chase Bank U.S.A., N.A. Chase is one of the country’s largest home mortgage providers and loan servicing agencies, including providing loan modifications to borrowers caught in the recent home loan crisis and real estate valuation crisis. Chase’s home loans were insured by government agencies, including Fannie Mae, in the amounts of \$1.4 billion for 2007, \$3.5 billion for 2008, and \$9.7 billion for 2009. Especially relevant for this action, Chase services loans for third-parties as part of its core business, generating substantial revenues, and included over \$1 billion dollars in mortgage loans in 2009 that were serviced for third-parties, including Fannie Mae, with Chase’s percentage of third-party loan servicing revenue increasing in 2009 over the prior two years.
6. Fannie Mae’s primary corporate address is 3900 Wisconsin Avenue NW, Washington, DC 20016. Fannie Mae is a government-sponsored enterprise established by Congress in 1938 and chartered by Congress in 1968 as a private shareholder-owned corporation. Its stock is traded on the Over the Counter market. Fannie Mae assists homebuyers by providing capital for funding mortgage loans and operates in the U.S. secondary mortgage market. Rather than making home loans directly to consumers, Fannie Mae works with mortgage bankers, brokers and other primary mortgage market partners

1 to help ensure they have funds to lend to home buyers at affordable rates.
2 Fannie Mae funds its mortgage investments primarily by issuing debt
3 securities in the domestic and and international capital markets. On
4 information and belief, Fannie Mae relies upon other lenders, such as Chase,
5 to service its mortgages and to engage in collection practices when the
6 borrowers fall behind in their payments.

7 **FACTUAL ALLEGATIONS**

8 7. Defendants are, and at all times mentioned herein were, corporations and
9 “persons,” as defined by 47 U.S.C. § 153 (10). Plaintiff is informed and
10 believes, and on the basis of that information and belief alleges, that at all
11 times mentioned in this Complaint, both Defendants were the agents and
12 employees of their codefendants, and in doing the things alleged in this
13 Complaint, were acting within the course and scope of that agency and
14 employment.

15 8. At all times relevant, Plaintiff was an individual residing within the State of
16 California. Plaintiff is, and at all times mentioned herein was, a “person” as
17 defined by 47 U.S.C. § 153 (10).

18 9. Plaintiff obtained home mortgages in the late 2005 – early 2006 time-frame
19 for her real property through Chase’s home financing entity Chase Bank
20 U.S.A., N.A. Those included loan no. 1096734380. On information and
21 belief, once the loan had closed, Chase sold Plaintiff’s mortgages to Fannie
22 Mae, and they have been owned by Fannie Mae throughout the relevant
23 period herein. Plaintiff’s loan is owned by Fannie Mae and that loan has
24 been serviced by Chase for Fannie Mae for all of the relevant time period.
25 The Fannie Mae website responds to an inquiry as to whether Plaintiff’s loan
26 is a Fannie Mae loan in the affirmative, and furthermore, Plaintiff was told
27 directly by Chase employee “Lynn”, employee number 6745695, in
28 approximately October, 2008, that her loan was in fact owned by Fannie Mae

during the relevant time period Plaintiff received the calls complained of herein.

10. This lawsuit seeks statutory damages for the TCPA violations committed by Defendant Chase, both from Chase and from the creditor Defendant Fannie Mae, for violations made by Chase, its related entities, subsidiaries and agents while servicing Fannie Mae loans. Even though Plaintiff's mortgage loans were owned by Defendant Fannie Mae, Chase and its related entities, subsidiaries and agents have serviced the loan throughout the relevant time period, engaged in collection efforts and while doing so, committed the TCPA violations while acting in such capacity for Defendant Fannie Mae. In addition to servicing Plaintiff's loans, through agreements with Fannie Mae, Chase services many thousands, or tens of thousands, of mortgages for and on behalf of Fannie Mae, including loans not originally placed by Chase but placed by other lenders but serviced by Chase for Fannie Mae. Chase also services mortgages originally placed by Chase but sold by Chase to Fannie Mae, including Plaintiff's mortgages. Thus, Chase has or had loan servicing agreements for many thousands of borrowers whose loans are or were owned by Fannie Mae loans during the relevant period whereby Fannie Mae is the creditor or owner of the loan and Chase is the entity servicing the loans for Fannie Mae. In that capacity, for all the Fannie Mae loans it services, Chase collects payments and engages in collection efforts when the borrowers are behind in their payments. As alleged herein, Chase, its related entities, subsidiaries and agents repeatedly violated the TCPA, 47 U.S.C. § 227 *et seq.*, by negligently and/or willfully contacting Plaintiff on Plaintiff's cellular telephone. Fannie Mae is also liable for such TCPA violations, pursuant to both agency theories and the Federal Communication Commission's Declaratory Ruling FCC 07-232 (December 28, 2007) ("FCC Ruling") holding a creditor to be liable for the TCPA violations of its agent.

1 11. Here Defendant Chase and its related entities, subsidiaries and agents had
2 direct communication with Plaintiff in the commission of the TCPA
3 violations alleged herein. However, in engaging in such violations, Chase
4 was acting on behalf of the creditor Fannie Mae, who communicated with
5 Plaintiff only through Chase, without Fannie Mae's direct involvement with
6 Plaintiff. Chase never specifically advised Plaintiff about the sale of
7 Plaintiff's loans to Fannie Mae and the resulting Chase loan servicing
8 agreement with Fannie Mae for several years, until approximately October,
9 2008 when Chase employee "Lynn", employee number 6745695, informed
10 Plaintiff that her loan had been sold by Chase to Fannie Mae and owned all
11 along by Fannie Mae.

12 12. On multiple occasions beginning in approximately May, 2007 when Plaintiff
13 experienced financial difficulties, and continuing on many occasions over the
14 following 10 to 12 months, Defendant Chase, through its related entities,
15 subsidiaries and agents, including Chase Bank USA, N.A., and Chase Home
16 Finance, LLC, contacted Plaintiff on Plaintiff's cellular telephone via an
17 "automatic telephone dialing system," as defined by 47 U.S.C. § 227 (a)(1)
18 and used "an artificial or prerecorded voice" as prohibited by 47 U.S.C. §
19 227 (b)(1)(A). Such calls requested that Plaintiff make payments on her
20 home mortgages and bring her accounts current, and such calls were made
21 repeatedly to Plaintiff's cell phone in that 10 to 12 month time period. Those
22 calls by Chase were received by Plaintiff on her cell phone at least several
23 times a week, in the May, 2007 time-frame, and much more frequently in the
24 next 10 to 12 months. At a minimum, Plaintiff received dozens of calls to
25 her cell phone from May, 2007 through April, 2008 made by Chase or its
26 related entities, subsidiaries or agents.

27 13. On information and belief, Chase made such calls to Plaintiff's cellular
28 telephone pursuant to its agreement with Fannie Mae to service and collect

1 Plaintiff's loan payments and arrearages for Fannie Mae, and in carrying out
2 its duties as the loan servicing agency working on behalf of Defendant
3 Fannie Mae, the entity that owned Plaintiff's home mortgages. On
4 information and belief, such calls were made by Chase, its related entities,
5 subsidiaries and its agents on behalf of and for the benefit of Defendant
6 Fannie Mae, as well as for Chase's own financial benefit as the loan
7 servicing agency for Fannie Mae. Defendant Chase also made calls to other
8 proposed Class members' cell phones while servicing their loans on behalf of
9 creditor Fannie Mae during the relevant time period, all while performing
10 Fannie Mae's loan servicing on behalf of and for the benefit of the creditor
11 Defendant Fannie Mae.

12 14. Some of the numbers from which Chase and its agents called Plaintiff are as
13 follows: 866-998-2500; 210-614-1167; 888-609-2379; 800-723-3004; 909-
14 484-2356; and 877-881-2182.

15 15. Due to renewed and continuing financial difficulties, Plaintiff fell behind in
16 making the payments for the original adjustable rate loans and in 2008 sought
17 to modify the original loans obtained through Chase. For over six months in
18 2008 Plaintiff sought to modify her loans with Chase and in or about January,
19 2009, new agreements were put in place to modify Plaintiff's original loan
20 payments. However, Plaintiff had further problems in making timely
21 payments on those modified mortgage obligations serviced by Chase. As a
22 result, again Chase, through its subsidiaries, related entities and agents, and
23 through at least one of its entities Chase Home Finance LLC, and on behalf
24 of creditor Defendant Fannie Mae, made additional calls to Plaintiff's cell
25 phone beginning again in March, 2009 via an "automatic telephone dialing
26 system," as defined by 47 U.S.C. § 227 (a)(1) and / or by a prerecorded voice
27 message during the relevant period, and continuing thereafter. At a
28

1 minimum, Plaintiff received dozens of calls after March, 2009 made to her
2 cell phone from Chase.

3 16. During these telephone calls made after March, 2009 Defendant Chase and
4 its related entities, subsidiaries and agents used “an artificial or prerecorded
5 voice” as prohibited by 47 U.S.C. § 227 (b)(1)(A).

6 17. The telephone number Defendant Chase and its related entities, subsidiaries
7 and agents called Plaintiff was assigned to a cellular telephone service for
8 which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. §
9 227 (b)(1).

10 18. These telephone calls constituted calls that were not for emergency purposes
11 as defined by 47 U.S.C. § 227 (b)(1)(A)(i).

12 19. Plaintiff did not provide prior express consent at any time to Fannie Mae to
13 receive calls made to her cell phone with an autodialer and / or with
14 prerecorded voice messages, pursuant to 47 U.S.C. § 227 (b)(1)(A). Plaintiff
15 did not provide prior express consent at any time to Chase or any of its
16 entities, subsidiaries or agents to receive calls made to her cell phone with an
17 autodialer and / or with prerecorded voice messages, pursuant to 47 U.S.C. §
18 227 (b)(1)(A).

19 20. Pursuant to the Federal Communication Commission’s Declaratory Ruling
20 FCC 07-232 (December 28, 2007) (“FCC Ruling”) promulgated pursuant to
21 the instructions of Congress to make such rules as necessary to implement
22 the TCPA, the creditor -- here Fannie Mae -- is also responsible for the
23 TCPA violations committed by its agents – here Chase -- collecting on the
24 account for the creditor. That FCC Ruling states: “. . . a creditor on whose
25 behalf an autodialed or prerecorded message call is made to a wireless
26 number bears the responsibility for any violation of the Commission’s rules.
27 Calls made by a third party collector in behalf of that creditor are treated as if
28 the creditor itself placed the call.” *Id.* at paragraph 10. Thus, both under that

1 FCC Ruling, and pursuant to agency theories of liability and *respondeat
2 superior*, Defendant Fannie Mae is also liable to Plaintiff and the Class for
3 the TCPA violations alleged herein.

4 21. These telephone calls by Defendant Chase and its agents, and on behalf of
5 the creditor Defendant Fannie Mae, violated 47 U.S.C. § 227(b)(1).

6 **CLASS ACTION ALLEGATIONS**

7 22. Plaintiff brings this action on behalf of herself and on behalf of all others
8 similarly situated (“The Class”).

9 23. Plaintiff represents, and is a member of, The Class defined as follows:

10 ”All persons within the United States whose loan was owned or
11 guaranteed by Defendant Fannie Mae and also serviced by Chase within the
12 relevant time period, and who received any telephone call from Defendant
13 Chase, its related entities, subsidiaries or agents to that person’s cellular
14 telephone made through the use of any automatic telephone dialing system or
15 an artificial or prerecorded voice, and without the called party giving prior
16 express consent to be called in that manner, within the four years prior to the
17 filing of the original Complaint in this action.”

18 24. Defendants, their employees and agents are excluded from The Class.
19 Plaintiff does not know the number of members in The Class, but believes
20 the Class Members number in the tens of thousands, if not more. Thus, this
21 matter should be certified as a Class action to assist in the expeditious
22 litigation of this matter.

23 25. Plaintiff and members of The Class were harmed by the acts of Defendants in
24 at least the following ways: Defendant Chase, acting on behalf of and for the
25 benefit for creditor Defendant Fannie Mae, illegally contacted Plaintiff and
26 The Class members via their cellular telephones for a number of reasons,
27 including in order to request and pressure such Class members to bring
28 current the mortgage payments on the mortgages owned by Fannie Mae and

1 serviced by Chase. As a result, Plaintiff and The Class members incurred
2 certain cellular telephone charges or reduce cellular telephone time for which
3 Plaintiff and The Class members previously paid, by having to retrieve or
4 administer messages left by Defendant Chase during those illegal calls, and
5 invading the privacy of said Plaintiff and The Class members. Plaintiff and
6 The Class were damaged thereby.

7 26. This suit seeks only damages and injunctive relief for recovery of economic
8 injury on behalf of The Class and it expressly is not intended to request any
9 recovery for personal injury and claims related thereto. Plaintiff reserves the
10 right to expand The Class definition to seek recovery on behalf of additional
11 persons as warranted as facts are learned in further investigation and
12 discovery.

13 27. The joinder of The Class members is impractical and the disposition of their
14 claims in the Class action will provide substantial benefits both to the parties
15 and to the court. The Class can be identified through Defendants' records.

16 28. There is a well-defined community of interest in the questions of law and fact
17 involved affecting the parties to be represented. The questions of law and
18 fact to The Class predominate over questions which may affect individual
19 Class members, including the following:

20 a. Whether, within the four years prior to the filing of the original Complaint
21 in this action, Defendant Chase, through its subsidiaries, entities and
22 agents, made any call (other than a call made for emergency purposes or
23 made with the prior express consent of the called party) to a Class
24 member using any automatic telephone dialing system or an artificial or
25 prerecorded voice to any telephone number assigned to a cellular
26 telephone service.

27 b. Whether, within the four years prior to the filing of the original Complaint
28 in this action, Defendant Chase, through its subsidiaries, entities and

1 agents, made any call (other than a call made for emergency purposes or
2 made with the prior express consent of the called party) to the Class
3 member using any automatic telephone dialing system or an artificial or
4 prerecorded voice to any telephone number assigned to a cellular
5 telephone service while servicing loans for which Defendant Fannie Mae
6 was the owner and creditor, and for Fannie Mae's benefit, while
7 collecting payments on those loans, thereby making Fannie Mae liable
8 for the TCPA violations as well as Chase.

9 c. Whether Defendant Fannie Mae owned the mortgage loan for which
10 Defendant Chase was making the calls to Plaintiff that violated the TCPA,
11 and whether Defendant Chase and Defendant Fannie Mae were acting as
12 principal or agent, one for the other, in making the cell phone calls to
13 Plaintiff and The Class members, and whether one is liable for the acts of
14 the other.

15 d. Whether Plaintiff and The Class were damaged thereby, and the extent of
16 damages for such violations; and

17 e. Whether Defendants should be enjoined from engaging in such conduct in
18 the future.

19 29. Plaintiff is asserting claims that are typical of The Class because she is a
20 person that received numerous calls from Chase, its related entities,
21 subsidiaries and agents, calls that were made on behalf of Fannie Mae as the
22 creditor on the loans, using an automatic telephone dialing system or an
23 artificial or prerecorded voice, and without her prior express consent before
24 receiving such calls. Plaintiff will fairly and adequately represent and protect
25 the interests of The Class in that Plaintiff has no interests antagonistic to any
26 member of The Class.

27 30. Plaintiff and the members of The Class have all suffered irreparable harm as
28 a result of the Defendants' unlawful and wrongful conduct. Absent a class

1 action, The Class will continue to face the potential for irreparable harm. In
2 addition, these violations of law will be allowed to proceed without remedy
3 and Defendants will likely continue such illegal conduct. Because of the size
4 of the individual Class member's claims, few, if any, Class members could
5 afford to seek legal redress for the wrongs complained of herein.

6 31. Plaintiff has retained counsel experienced in handling class action claims and
7 claims involving violations of the Telephone Consumer Protection Act.

8 32. A class action is a superior method for the fair and efficient adjudication of
9 this controversy. Class-wide damages are essential to induce Defendants to
10 comply with federal and California law. The interest of Class members in
11 individually controlling the prosecution of separate claims against
12 Defendants is small because the maximum statutory damages in an individual
13 action for violation of privacy are minimal. Management of these claims is
14 likely to present significantly fewer difficulties than those presented in many
15 class claims.

16 33. Defendants have acted on grounds generally applicable to The Class, thereby
17 making appropriate final injunctive relief and corresponding declaratory
18 relief with respect to the Class as a whole.

19 **FIRST CAUSE OF ACTION**

20 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**

21 **47 U.S.C. § 227 ET SEQ.**

22 34. Plaintiff incorporates by reference all of the above paragraphs of this
Complaint as though fully stated herein.

23 35. The foregoing acts and omissions of Defendant Chase, through its related
entities, subsidiaries and agents, including but not limited to Chase Bank
24 U.S.A., and Chase Home Finance, LLC, in making the calls to the cell
phones of Plaintiff and The Class, constitute numerous and multiple
25 negligent violations of the TCPA, including but not limited to each and every
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27
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one of the above-cited provisions of 47 U.S.C. § 227 *et seq.* Defendant Chase serviced and collected on those loans on behalf of Defendant Fannie Mae, the creditor that owned the Class members' loans, and Fannie Mae as creditor hired Chase to act as its agent in servicing and collecting on its loans, and Fannie Mae participated in, consented to, and accepted funds from, the efforts of its agent Chase in collecting on such Fannie Mae loans. As a result, Defendant Fannie Mae is also liable for the TCPA violations alleged herein, by Chase in making the calls to the cell phones of Plaintiff and The Class, under the Federal Communication Commission's Declaratory Ruling, FCC 07-232 (December 28, 2007) and 47 U.S.C. § 227 *et seq.*

- 36. As a result of Defendants' negligent violations of 47 U.S.C. § 227 *et seq.*, Plaintiff and The Class are entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- 37. Plaintiff and The Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT 47 U.S.C. § 227 *ET SEQ.*

- 38. Plaintiff incorporates by reference the above paragraphs 1 through 33, inclusive, of this Complaint as though fully stated herein.
- 39. The foregoing acts and omissions of Defendant Chase, through its related entities, subsidiaries and agents, including but not limited to Chase Bank U.S.A., and Chase Home Finance, LLC, in making the calls to the cell phones of Plaintiff and The Class, constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 *et seq.* Defendant Chase serviced and collected on those loans on behalf of Defendant Fannie Mae, the creditor that owned The Class members' loans,

1 and Fannie Mae as creditor hired Chase to act as its agent in servicing and
2 collecting on its loans, and Fannie Mae participated in, consented to, and
3 accepted funds from, the efforts of its agent Chase in collecting on such
4 Fannie Mae loans. As a result, Defendant Fannie Mae is also liable for the
5 TCPA violations alleged herein, by Chase in making the calls to the cell
6 phones of Plaintiff and The Class, under the Federal Communication
7 Commission's Declaratory Ruling, FCC 07-232 (December 28, 2007) and 47
8 U.S.C. § 227 *et seq.*

9 40. As a result of Defendants' knowing and/or willful violations of 47 U.S.C. §
10 227 *et seq.*, Plaintiff and The Class are entitled to treble damages, as
11 provided by statute, up to \$1,500.00, for each and every violation, pursuant
12 to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).
13 41. Plaintiff and The Class are also entitled to and seek injunctive relief
14 prohibiting such conduct in the future.

15 **PRAYER FOR RELIEF**

16 Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and The
17 Class members the following relief against Defendants, and each of them:

18 **FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF**
19 **THE TCPA, 47 U.S.C. § 227 ET SEQ.**

20 • As a result of Defendants' negligent violations of 47 U.S.C. § 227(b)(1),
21 Plaintiff seeks for herself and for each Class member \$500.00 in statutory
22 damages, for each and every violation, pursuant to 47 U.S.C. §
23 227(b)(3)(B).
24 • Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such
25 conduct in the future.
26 • Any other relief the Court may deem just and proper.

1 **SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL VIOLATION**
2 **OF THE TCPA, 47 U.S.C. § 227 ET SEQ.**

3 • As a result of Defendants' willful and/or knowing violations of 47 U.S.C.
4 § 227(b)(1), Plaintiff seeks for herself and each Class member treble
5 damages, as provided by statute, up to \$1,500.00 for each and every
6 violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. §
7 227(b)(3)(C).
8 • Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such
9 conduct in the future.
10 • Any other relief the Court may deem just and proper.

11 **TRIAL BY JURY**

12 Pursuant to the seventh amendment to the Constitution of the United States of
13 America, Plaintiff is entitled to, and demands, a trial by jury.

14 Date: September 10, 2010

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